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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

MICHAEL E. TINDALL
Plaintiff-Petitioner
v.

WAYNE COUNTY FRIEND OF THE COURT, BY JOSEPH A. SCHEWE, Director of Legal Services; ALAN E. SKROK, Staff Attorney, Assistant Friend Of Court; WAYNE COUNTY SHERIFF'S DEPARTMENT, By: ROBERT FICANO, Sheriff; WAYNE COUNTY CIRCUIT COURT, FAMILY DIVISION, By: KIRSTEN FRANK KELLY, Presiding Judge; MICHAEL F.SAPALA, Chief Judge
Defendants-Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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APPENDIX III TO PETITION FOR A WRIT OF CERTIORARI

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Appendix H

STATE OF MICHIGAN
IN THE INGHAM COUNTY CIRCUIT COURT
GENERAL TRIAL DIVISION

MICHAEL E. TINDALL, individually and on behalf of all others similarly situated,

Plaintiff,

v. Docket No. 00-91216 AZ

THE STATE OF MICHIGAN; MICHIGAN STATE FRIEND OF COURT BUREAU; WAYNE COUNTY CIRCUIT COURT, FAMILY DIVISION; WAYNE COUNTY FRIEND OF COURT; OAKLAND COUNTY CIRCUIT COURT, FAMILY DIVISION; OAKLAND COUNTY FRIEND OF COURT; MACOMB COUNTY CIRCUIT COURT, FAMILY DIVISION; MACOMB COUNTY FRIEND OF COURT; MONROE COUNTY CIRCUIT COURT, FAMILY DIVISION; MONROE COUNTY FRIEND OF COURT; WASHTENAW COUNTY CIRCUIT COURT, FAMILY DIVISION; WASHTENAW COUNTY FRIEND OF COURT; LIVINGSTON COUNTY CIRCUIT COURT, FAMILY DIVISION; LIVINGSTON COUNTY FRIEND OF COURT GENESEE COUNTY CIRCUIT COURT, FAMILY DIVISION; GENESEE COUNTY FRIEND

OF COURT; DAVID M. FINDLING, ESQ.; and FINDLING LAW FIRM, PLC,

Defendants.

This Court, having considered Motions for Summary Disposition filed by all Defendants, having considered Plaintiffs Motion for Extension of Time to File a Motion for Class Certification, and having heard oral arguments on May 5, 2000, issues the following Opinion and Order.

OPINION

FACTS

Plaintiff; a licensed attorney in the State of Michigan, was divorced in Wayne County in 1991. Until recently, Wayne County has retained jurisdiction over the child support matter in Plaintiff's divorce. Since the time of Plaintiff's divorce, *it* has been alleged that Plaintiff has not remained current on his child support obligations. As a result, Wayne County has taken steps to enforce its order of support. Specifically, the Wayne County Circuit Court has issued show cause orders, directing Plaintiff to show cause why he is not in violation of the Court's order. The Wayne County Circuit Court also appointed a

receiver to levy on the personal assets of Plaintiff

for his failure to pay child support and at one time, the Wayne County Friend of Court began to initiate procedures to revoke or suspend Plaintiff's license to practice law.

Plaintiff, in pro per, now brings this ten count Complaint alleging that MCL *5* 52.628; MSA 25.164(28) and MCL *552.625b;* MSA 25.164(25b) are unconstitutional. These statutes allow a circuit court to suspend a driver's license or an occupational license for the failure to pay child support and to place a lien upon property of payers who are delinquent on child support. Plaintiff also alleges that the Wayne County Circuit Court is violating MCL 552.507; MSA 25.176(7) when issuing show cause orders and bench warrants and that "upon information and belief' all of the other named counties follow the same procedures as Wayne County.

Among the relief requested is declaratory judgment that the statutes are unconstitutional, that the circuit courts and friend of courts should be enjoined from violating the procedures outlined in the above named statutes, that an accounting be conducted for all property seized in accordance with statute, that all license suspensions under the above statute be rescinded, and that restitution be granted for all property wrongfully taken.

ANALYSIS

All of the Defendants have brought Motions for Summary Disposition contending that this Court lacks subject matter jurisdiction and that Plaintiff lacks standing to bring this lawsuit. MCR 2.116(C)(4) and *(5).* When reviewing ~ motion for summary disposition under MCR 2.1 16(C)(4), the court must determine whether the pleadings demonstrate that the defendant is entitled to judgment as a matter of law, or whether the affidavits and other proofs show that there is no genuine issue of material fact. *Faulkner* v *Flowers,* 206 Mich App *562,* 564; 522 NW2d 700 (1994). In reviewing a motion for summary disposition pursuant to MCR 2.11 6(C)(5), the court must consider the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties and determine whether defendant is entitled to judgment as a matter law. *Dep 't of' Social Services v Baayoun,* 204 Mich App 170; 514 NW2d 522 (1994).

I. Class Certification

Plaintiff has pled this matter in the form of a class action lawsuit. Pursuant to MCR 3.50 1(B)(1)(a), when a party files a class action suit, a motion for certification of the class must be brought within 91 days of the filing of the

complaint. This Complaint was filed on January 21,2000. Therefore, the motion for certification should have been filed on or before April 21, 2000. On April 14, 2000, Plaintiff filed a Motion to Extend the Time for Filing the Motion for Class Certification. Plaintiff alleges that the reason for the delay was that he received several of the motions for summary disposition on April 3, 2000. Additionally, Plaintiff asserts that a court may rule on MCR 2.116 motions before a class is certified and that the motions pending in this case will assist in determining the class. MCR 3.50 1(D)(3).

One Defendant has responded to this Motion, and contends that Plaintiff has not made an adequate showing as to why he did not file the motion for certification in a timely fashion. Also, Defendant contends that this case is not a good candidate for a class action since the case must involve common questions of law, and this case does not where each county applies different procedures in child support cases.

MCR 3.501(B)(1)(b) provides that the time for filing a motion for class certification may be extended on a motion for cause shown. No party has defined what "cause" means. Moreover, there is no case law interpreting this court rule. Therefore, the Court is treating this rule as requiring a showing of good cause.

Good cause generally means "a substantial

reason amounting in law to a legal excuse for failing to perform an act required by law." *Buchanan* v *City Council of Flint,* 231 Mich App 536, *544-545; 586* NW2d 573 (1998) (Citing *Franchise Management Unlimited, Inc* v *America's Favorite Chicken,* 221 Mich App 239, 246; 561 NW2d 123 (1997). Good cause has also been defined as "due diligence." *Bush* v *Beemer,* 224 Mich App 457, 462; *569* NW2d 636 (1997). Plaintiff has failed to demonstrate that he meets either standard.

Plaintiff has not attached an affidavit demonstrating cause for not filing a timely motion. In fact, Plaintiff has not alleged that he made a single effort to file the motion for certification on time. The motions for summary disposition were not filed until day 73 out of 91 . the very end of the motion period. Therefore, any affect the motions for summary disposition had are minimal. The Court is further persuaded that cause has not been shown where the Court inquired of Plaintiff during oral argument what individuals could represent an injury in each of the named counties and Plaintiff refused to disclose names. Additionally, although MCR 3.501(D)(3) permits a court to decide a MCR 2.116 motion prior to class certification, this provision in no way excuses the requirements of subsection (B).

Moreover, this case is not of the nature properly brought as a class action. MCR 3.501 (A)(1) states that a class action may be brought only

if:

(a) the class is so numerous that joinder of all members is impracticable;

(b) there are questions of law or fact common to the members of the class that predominate over questions affecting only individual members;

(c) the claims or defenses of the representative parties are typical of the claims or defenses of the class;

(d) the representative parties will fairly and adequately assert and protect the interests of the class; and

(e) the maintenance of the action as a class action will be superior to other available methods of adjudication in promoting the convenient administration of justice.

In this case, there are not questions of law and fact common to the members that predominate over questions affecting individual members. The individual county defendants have provided affidavits to the effect that the procedures followed are not the same as those followed in Wayne County. Therefore, each claim against each county defendant will vary based on the procedures each county employs in the

administration of its child support docket.

Furthermore, Plaintiff demonstrated during oral argument that the facts of each claim pertaining to an individual class member may vary greatly. For example, Plaintiff in this case has not had any property seized by any court as a result of his failure to pay child support. However, Plaintiff gave an example of a class member he would like to include in this action. This particular member had a gas station sold by Wayne County as a result of failure to pay child support. Plaintiff stated that as a part of this lawsuit, he would like an order from this Court voiding the sale of the gas station and returning the property to the plaintiff. Based on this example, the facts in these two cases are not similar. The interests of the members who actually have had property seized is much different than Plaintiff's, who has had no property taken. Therefore, the representative member could not fairly represent the interests of the class where their interest are very different in nature.

This point is further demonstrated by the fact that only one receiver has been named as a litigant in this lawsuit but, Defendant Findling is not the only receiver that has been appointed by any of the named county defendants or friend of court defendants. Therefore, it is clear that the allegations against Defendant Findling are merely those raised by Plaintiff himself, and do not represent claims by other potential class members

against unnamed appointed receivers in other counties.

For all of these reasons, Plaintiff has failed to demonstrate cause for an extension of time to file the motion for class certification.

II. Defendants 'Motions for Summary Disposition

A. Subject Matter Jurisdiction

The first issue raised by Defendants is that this Court lacks subject matter jurisdiction to hear the claims raised in this complaint. The question of subject matter jurisdiction is one of law for the court to decide. *DNR* v *Holloway Construction Co,* 191 Mich App 704, *705;* 478 NW2d 677 (1991). The burden is on the plaintiff to establish jurisdiction. *PhinneyvPerlmutter,* 222 Mich App *513, 521; 564* NW2d *532* (1997).

1. Nature of the Relief Sought

All of the Defendants have raised the argument that even though Plaintiff has couched his claims in terms of declaratory judgment and injunction, the relief sought is in the nature of superintending control and the Court should treat it as such. Furthermore, Defendants contend that this Court lacks subject matter jurisdiction to issue an order of superintending control against another circuit court or the friend of court. The relief requested by Plaintiff includes a declaration that MCL *552.628;* MSA 25.164(28) and MCL *552.625b;* MSA 25.1 64(25b) are unconstitutional,

an order rescinding all license suspensions, and an order returning all property seized pursuant to these statutes. Plaintiff further requests an order removing all receivers appointed by Defendants pursuant to MCL *552.625b;* MSA 25.164(25b), an accounting for all property seized pursuant to this statute and the retrieval of all such property, and prospective orders to all Defendants to not violate these named statutes in the future. Plaintiff in this case contends that one of several remedies he seeks is declaratory judgment and that it is not for Defendants to decide otherwise.

A circuit court is free to inquire into the true nature of the relief being sought in a complaint. *Ferency* v *Secretary of State,* 139 Mich App 677, 683; 362 NW2d 743 (1984). Moreover, when one court is called upon to review the generalized practices of another and issue a remedial order to change those practices, the only remedy available to resolve the matter is that of superintending control. *Cahill* v *Thomassen,* 393 Mich 137, 143; 224 NW2d 24 (1974); *Saginaw Public Libraries v Judges of the 70th Judicial District Court,* 118 Mich App 379, 392; 325 NW2d 777 (1982).

In *Cahill,* the plaintiff received a traffic ticket and appeared in district court to contest the ticket. The plaintiff challenged the district court's procedure of requiring a $35 appearance bond and contended that he was entitled to a jury trial. When the district court refused, the plaintiff

brought a class action suit seeking a writ of superintending control in the circuit court. Among the relief requested was an order demanding that the district court judge follow what the plaintiff believed to be the proper procedures for filing a bond and that each defendant in a traffic offense case be given a jury trial.

Like the plaintiff in *Cahill,* Plaintiff in this case has brought this claim in the form of a class action suit, requesting that this Court resolve his objections concerning the generalized practices of another court. Specifically, the manner in which other circuit courts issue notices of show cause hearings and interpret certain statutes under the Friend of Court Act. Therefore, the only remedy available is that of superintending control and the Court is treating this Complaint as such.

The next issue is whether this Court has subject matter jurisdiction to issue an order of superintending control over the circuit court Defendants. Const 1963, Art 6, § 4 states that the Michigan Supreme Court is vested with general superintending control over all courts. MCR

3.302(D) provides that the circuit court has jurisdiction to issue superintending control orders to "lower courts or tribunals." See also Const 1963, Art 6, § 13. Clearly, this umbrella ofjurisdiction does not cover the seven named circuit courts in this action. Likewise, with respect to the county friend of courts, under the Friend of

Court Act, the friend of court is an employee of the circuit court and is under the direct supervision of the chief judge. MCL *552.503(4)* and *(5);* MSA 25.176(3)(4) and *(5); Morrison* v *Richardson,* 198 Mich App 202, 212; 497 NW2d *506* (1992). Therefore, this Court equally lacks jurisdiction over the friend of court offices being sued in this matter, as they are merely an extension of the circuit court.

Additionally, the State Friend of Court Bureau is not a lower tribunal for which this Court may take superintending control over. Pursuant to MCL *552.519(1);* MSA 25.176(1 9)(1): "The state friend of the court bureau is created within the state court administrative office, under the supervision and direction of the supreme court." See also MCR 8.101. Thus, this Court does not have jurisdiction under MCR 3.302(D). The State Friend of Court Bureau is not an inferior tribunal to this Court where it is under the supervision and direction of the Supreme Court.

This case, at its essence, involves a request upon this Court to control the generalized practices of other circuit courts. The Court of Appeals has specifically addressed this issue in the case of *Morcom v Schemanske,* 15 Mich App 358, 360; 166 NW2d *540* (1968). In the *Morcom* case, the Court of Appeals stated:

> We are persuaded that the Supreme Court has delegated to us only the power to issue

> such writs of superintending control] in respect of a particular error in an actual case and controversy, and that we have not been delegated superintending control over the general practices of an inferior court or any judge thereof.

Likewise, this Court is without jurisdiction.

Even if this Complaint were to be treated as a request for declaratory judgment, rather than superintending control, this Court has no jurisdiction to grant the relief requested. In *Kioka* v *Brake*, 318 Mich 87; 27 NW2d 507 (1947), the Michigan Supreme Court stated:

> The judge further held that even if he were to assume that the one-man grand jury act was unconstitutional, the circuit court for the county of Wayne had no power to inform the Ingham county circuit court either by way of declaratory judgment, injunction or otherwise of the unconstitutionality of the act; and that the only way in which the Ingham county circuit court could be restrained from future action would be by writ of prohibition from the Supreme Court. The trial judge was correct.

In *Kioka*, the Plaintiff sued two Ingham County Circuit Court judges and the State of Michigan, requesting that the one-man grand jury statute be

deemed unconstitutional and requesting that the Ingham County Circuit Court be enjoined from applying this procedure. The Supreme Court upheld the dismissal of the case on the basis that the Wayne County Circuit Court had no authority to act on such a request. The court noted that the supervisory power over the circuit court belonged to the Supreme Court. Const 1963, art 6, § 4. This same principle applies to the case at bar. This Court is without authority to inform the Wayne County Circuit Court that the generalized procedures that it employs is unconstitutional and issue an order enjoining the court from further constitutional violation.

2. Money Damages

Defendants also contend that this Court does not have jurisdiction because Plaintiff has requested monetary damages, i.e. restitution, and therefore, this matter should be before the Court of Claims. *See* MCL 600.64 19(1)(a); MSA 27A.6419(1)(a). The Court of Claims has exclusive jurisdiction over claims of money damages against the State or State agencies. *Silverman* v *University of Michigan Board of Regents,* 445 Mich 209; 516 NW2d 54 (1994). Additionally, the Court of Claims has jurisdiction over claims of an unconstitutional taking. *DNR* v *Holloway Construction Co, supra.* Plaintiff responds that he is not asking for money damages, but rather he is requesting that the State be required to return any and all property taken in non-payment of child support cases.

Therefore, since all of the relief requested is equitable, this claim should be in the circuit court. AuSable Manistee Action Council, Inc v State of Michigan, 182 Mich App 596; 452 NW2d 832 (1989). Paragraph 86 of the Complaint requests "restitution of all such property and/or the proceeds of any such sales," as well as an injunction and an accounting. Requesting of proceeds is clearly a claim for money damages. However, the Court of Appeals stated in the case of *Mooahesh* v *Dep't of Treasury, 195* Mich App *551, 559;* 492 NW: d 246 (1992) that where a party seeks mainly equitable relief, and where a party only seeks a return of money alleged to be improperly taken, the circuit court does have jurisdiction. In *Mooahesh,* a class of lottery winners sued alleging that a statute that made lottery winnings taxable was unconstitutional. The class also sought return of taxes collected under the statute. The Court of Appeals determined in that situation that the circuit court had jurisdiction. Plaintiff is only seeking money damages to the extent that he is alleging that the property was lost as a result of an alleged constitutional violation. Therefore, with respect to the issue of money damages, the circuit court would have jurisdiction.

3. Defendant Findling and Findling Law Firm Court Appointed Receiver

Defendant Findling and the Findling Law Firm, the receiver appointed by the Wayne County

Circuit Court to collect overdue child support from Plaintiff, also contends that this Court lacks jurisdiction to hear any claims pertaining to alleged inappropriate procedures regarding his appointment and use of his authority. Defendant Findling asserts that his appointment may not be attacked collaterally and that he may not be sued without prior permission of the appointing court, Wayne County.

The Supreme Court stated in the case of *Westgate* v *Adams,* 293 Mich *559;* 292 NW 491 (1940), that the legality of an appointment of a receiver is not open to a collateral attack. Furthermore, the Court of Appeals in *Cohen* v *Bologna, 52* Mich App 149, 151; 216 NW2d *586* (1974), held that a court-appointed receiver is a ministerial officer of the court and cannot be sued without leave of the appointing court. In this case, Plaintiff has not sought permission from the Wayne County Circuit Court to bring this lawsuit.

Plaintiff responds that the *Cohen* case only applies to *in rem* cases and does not apply to personal actions against the receiver acting under color of law. Plaintiff contends that the case of *McAfees vBankers Trust Co,* 253 Mich *685;* 235 NW 807 (1931) demonstrates that a receiver may be sued without permission of the appointing court where it is alleged that the receiver has wrongfully taken property under color of state law. See also *Stephenson* v *Golden,* 279 Mich 710;276 NW2d 849 (1937).

In this case, it is undisputed that Defendant Findling has not taken action against Plaintiff's property. Plaintiff only alleges that since Findling was appointed as receiver, Findling has "constructively" taken Plaintiff's property. The essence of Plaintiffs complaint regarding the receiver is that the statute allowing the friend of court to appoint a receiver is unconstitutional and that the Wayne County Friend of Court and Defendant Findling did not follow proper procedures when Findling was appointed. These allegations are nothing more than a collateral attack on the appointment of Defendant Findling as receiver in this case. Defendant Findling has not taken any of Plaintiffs property. Thus, he could not have wrongfully taken the Plaintiffis property under color of law. Therefore, Plaintiff was required to obtain permission from the Wayne County Circuit Court prior to filing the instant action. His failure to do so leaves this Court without jurisdiction.

B. Standing

The next issue raised by Defendants is that Plaintiff lacks standing to bring this lawsuit. There is no allegation in the complaint that Plaintiff has ever been subjected to a license sanction as a result of a friend of court proceeding or that Plaintiff has ever had any property taken from him. Therefore, Plaintiff has not suffered and injury.

Standing is a legal term used to denote the existence of a party's interest in the outcome of litigation that will ensure sincere and vigorous advocacy. However, evidence that a party will engage in full and vigorous advocacy, by itself, is insufficient to establish standing. Standing requires a demonstration that the plaintiffs substantial interest will be detrimentally affected in a manner different from the citizenry at large. - *House Speaker* v *State Administrative Board,* 441 Mich *547, 554; 495* NW2d *539* (1993). Plaintiff must demonstrate an actual injury or a likely chance that he will suffer immediate injury different from the public. *Kuhn* v *Secretary of State,* 228 Mich App 319, 333; *579* NW2d 101 (1998).

Plaintiff responds that he has suffered an injury or is in imminent danger of suffering an injury. Specifically, he states that license sanctions were once sought against him. No sanctions were ever granted, however, because Plaintiff paid enough on his arrearages to stop the process. Additionally, Plaintiff contends that the Wayne County Circuit Court has appointed Defendant Findling as receiver in his case and that any day Findling could instigate attempts to take his property. Lastly, Plaintiff responds that this is a class action and that other members of the class have suffered actual injuries.

Since this is not a class action, the injuries

of potential class members is irrelevant. Moreover, it is clear on this record that Plaintiff has not suffered an actual injury or is in imminent danger of an injury upon which standing may be conferred. No license sanctions have been imposed and no property has been taken. And, Plaintiff cannot establish that he is under imminent threat of injury. With respect to all counties except Wayne, there has been no showing that they have taken any steps to issue any sanctions or take away any proçerty from Plaintiff. Therefore, any injury is merely hypothetical. As stated by the Michigan Supreme Court, a plaintiff may not contest the constitutionality of a statute unless the plaintiff can show an injury to his person or property. *Citizens for Pretrial Justice* v *Goldfarb,* 415 Mich *255,* 273; 327 NW2d 910 (1982). Any allegation of injury or imminent threat of injury by Plaintiff is not distinct from the citizenry at large.

Plaintiff also has not made a showing of injury or imminent threat of injury as a result of his dealings with Wayne County. Plaintiff contends that inappropriate show cause orders have been issued in his case and that the Wayne County Circuit Court has attempted to take away his license to practice law and his property. Plaintiff also argued that to this day, he suffers collateral effects from these constitutional violations.

Plaintiff cannot show any injury that has resulted from the application of MCL 552.526b; MSA 25.164(25b) to his divorce action. This statute provides:

> (12) To enforce a lien on real property or personal property other than an account at a financial institution, the office [of the friend of court] may order the sale of real property in the manner provided by law for the foreclosure of mortgage liens; order execution of the judgment; appoint a receiver of the real and personal property subject to the lien and order the property and its income to be applied to the amount of the judgment; or take any other appropriate action to enforce the judgment. The office shall mail a copy of orders under this subsection to the payer and recipient of support at his or her last known address.

In this case, it is undisputed that this statute has never been applied against Plaintiff. The receiver in this case was appointed by the Wayne County Circuit Court judge pursuant to a different statute, not the Wayne County Friend of Court. Additionally, Plaintiff's license to practice law has never been suspended under MCL 552.628; MSA 25.164(28). Although procedures were started under this statute, these procedures were not completed and Plaintiff has made no

showing that any further attempt to take his license has been initiated. Moreover, since Plaintiff's ongoing custody case is now under the jurisdiction of the Macomb County Circuit Court, the Wayne County Circuit Court may no longer take any action against Plaintiff.

The case *of Johnson* v *Turner,* 125 F3d 324 (CA 6, 1997) is instructive in this matter. In *Johnson,* the Sixth Circuit Court of Appeals held that two fathers, who filed a § 1983 action against a Tennessee juvenile court alleging that the statute pertaining to contempt and paternity proceedings were unconstitutional, did not have standing to bring the federal lawsuit where the plaintiffs were not involved in any pending paternity or contempt proceeding and where the plaintiffs could not show that they suffered from present, continuing adverse consequences flowing from the alleged unconstitutional statutes. The court stated:

In sum, at the time they filed these federal actions, none of the plaintiffs was incarcerated or involved in a pending paternity, support or contempt proceeding, and any constitutional challenges associated with the state court orders and proceedings are, therefore, moot. Those terminated state court actions cannot provide the requisite live case or controversy to confer upon these plaintiffs standing to challenge the constitutionality of the contempt and paternity procedures or statutes. The plaintiffs might have

avoided this result had they alleged a continuing, present adverse effect as a result of the state juvenile court paternity and support proceedings and judgments. The plaintiffs have not identified any continuing, present adverse consequences flowing from their having been subject to the paternity and contempt orders and the arrest warrants. *Johnson* at 337-338.

Subject to any proceedings for suspension at this time, Plaintiff does not have an injury for which standing may be conferred.

III. Defendant 's Request for Costs

Defendants in this case assert that this lawsuit is frivolous and that costs, including reasonable attorney fees, should be awarded to them. MCL 600.2591; MSA 27A.2591 pertains to the Court's ability to award costs for a frivolous lawsuit and provides as follows:

(1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney.

(2) The amount of costs and fees awarded under this section shall include all reasonable costs

actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees.

(3) As used in this section:

(a) "Frivolous" means that at least I of the[1] following conditions is met:

(i)The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
(ii)The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.
(iii) The party's legal position was devoid of arguable legal merit.

(b) "Prevailing party" means a party who wins on the entire record.

Based on this standard, the Court finds that this lawsuit was frivolous and that all Defendants are entitled to actual costs, including court costs and reasonable attorney fees. This suit is frivolous because the Plaintiffs Complaint is devoid of arguable legal merit and because the Plaintiffs primary purpose in initiating this action was to harass, embarrass, or injure the prevailing parties.

Beginning with the seven named circuit courts, the case law is clear that one circuit court may not take action against another, especially in the nature of the relief sought in this case. This principle is also true for the named friend of courts, which by statute are under direct control of the circuit court. Likewise, the circuit court has no authority to take the requested action against the State Friend of Court Bureau, an entity under the direct control of the Michigan Supreme Court.

Moreover, with respect to Plaintiff's claim that MCL 552.628; MSA 25.164(28) is unconstitutional, Plaintiff brought this, same claim in a case he filed in federal district court. In September, 1999, the Honorable Denise Hood held that the court would not address this issue where Plaintiff has not been subjected to this statute. *Tindall* v *Wayne Court Friend of Court,* unpublished opinion of the United States District Court, Eastern District of Michigan, decided September 30, 1999 (Docket No. 98-CV-73896-DT). This same claim was addressed in this case and this Court made the exact same finding, that the Plaintiff may not raise the issue of the constitutionality of this statute where he has not been subject to it. Therefore, Plaintiff was aware prior to filing this lawsuit that one forum had already determined this claim to be devoid of merit, yet Plaintiff chose to again pursue this claim in another forum in hopes of a favorable outcome. The Court concludes that under these

circumstances, this claim was brought to harass Defendants.

Similarly, Plaintiff's allegation that the procedures pertaining to a friend of court appointing a receiver are unconstitutional are completely devoid of merit where this procedure was never applied in Plaintiff's case, and therefore, he lacked standing to raise this issue.

The Court further concludes that Plaintiff's claims against Defendant Findling and the Findling Law Firm were devoid of legal merit and brought to harass and embarrass these Defendants. First, Plaintiff's claims are devoid of legal merit where the case law is clear that Plaintiff must seek permission to file a claim against a court appointed receiver from the appointing court prior to bringing suit. This is evident by the fact that the receiver in this case has not taken action against a single piece of Plaintiff's property. Thus, there can be no claim that Defendant Findling took improper action under color of his authority. This action is nothing more than an attempt to collaterally attack the appointment of the receiver. Additionally, it is apparent to this Court that Plaintiff attempted to harass or embarrass Defendant Findling with the filing of this lawsuit where Plaintiff identifies this Defendant in the caption of this case as "the garbage man." This name is in no way a legal identification of the Defendant. It is inappropriate to include such name calling in the caption of a

Complaint.

Based on all these findings, the Court concludes that this lawsuit is frivolous and Defendants are entitled to costs.

ORDER

IT IS ORDERED that all of the Defendants' Motions for Summary Disposition are GRANTED for the reason that this Court lacks subject matter jurisdiction and because Plaintiff lacks standing to bring this claim. The Complaint is hereby DISMISSED in its entirety.
IT IS FURTHER ORDERED that Defendants' Motion for Costs is hereby GRANTED and Defendants are entitled to actual costs and reasonable attorney fees, as this Complaint is frivolous.

Dated: May 30, 2000

Hon. Peter D. Houk
Circuit Court Judge
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